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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,371	06/22/2000	John D. Nelson	101992-200	8796

27267 7590 05/07/2004

WIGGIN AND DANA LLP  
ATTENTION: PATENT DOCKETING  
ONE CENTURY TOWER, P.O. BOX 1832  
NEW HAVEN, CT 06508-1832

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/599,371

Applicant(s)

NELSON ET AL.

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8-11,33,34,43-46,50,52,54 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8,33,34,43-46,50,52,54 and 56-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The Korean reference and Translation were no submitted; they are not available to examiner please submit.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following claims are pending: 1, 8-11, 33, 34, 38, 39, 43-46, 48, 50, 52, 54, 56, 57 and 58.

Applicants' amendment of 7/5/02 cancelled claims 4, 6, 7, 12-32 and 35-42. Applicants current amendment cancelled claim 2, 5, 47, 49, 51, 53 and 55; and claims are now of the elected invention, the restriction requirement maintained in the RCE.

The double patenting rejections are overcome by the Terminal disclaimer. The negative limitation has been removed, for the most part. See below.

Claims 45, 56 are rejected under 35 U.S.C. 112 first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Note that "Azoles" claim 9, would include thiazolinone.

Examiner does not find support for the negative limitations in the specification, nor any comment certifying no new matter was added. In fact, page 24, top specifically cites strong (otherwise undefined in amended claim language, or specification, chelating agents of zinc, copper, silver as within the scope of the invention. Absence of chelating agent would be contrary to claim 8-10.

Claims 8, 9 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent "complex" in claim I. There is no antecedent basis in 54, for the newly introduced "concentrate".

The claim 9 complexing agent is indefinite as to what is complexed; zinc, silver, copper or pyrithione.

Claims 1, 11, 33, 34, 43, 45, 46, 48, 50, 52, 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaufman et al 6017502 pyrithione complexes with zinc salts, the chloride (col. 4, line 38-55 alkano lamises are used, (col. 4, line 60). 3-52% pyrithione is used (col. 4, lines 35-37). The zinc salt is at 0.1-10% (last paragraph) Dilutions are in examples. See example 1 a complex of zinc sulfate, monohydrate, with sodium pyrithione is shown, within the instant ratios. The future, intended use, is of no patentable weight.

Claims 1, 8, 11, 44, 48, 54, and 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dixon et al EP 077630.

The rejection of record is maintained to Dilution, concentration obvious to the artisan to perform as required for the purpose at hand – storage, transportation, or use.

Claims 1, 8-11, 33, 34, 43-48, 50, 52, 54, 56-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kappock et al 5518774.

The rejection of record is maintained. Dilution, Concentration being obvious to the artisan.

Claims 33, 34, 43-48, 50, 52, 54, 56-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wiese et al 5227156.

The rejection of record is maintained.

Claims 1, 8-11, 45-47 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagata et al JP 134227.

The rejection of record is maintained.

Applicant's arguments filed on 1/22/04 have been fully considered but they are not persuasive. Applicants arguments are to patentability of concentrates over dilutions; we see no distinction. One in the art needs only the required components, effective for the required function, in this case antimicrobial efficacy, to be able to ascertain the required dilution, or inversely, starting components. The prior art clearly shows the level of expertise of the artisan as able to attain appropriate concentration by Multiplying, dividing, or simple testing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (571) 272-0633. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (571) 272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR  
May 4, 2004

NEIL S. LEVY  
PRIMARY EXAMINER